

Application by National Grid Electricity Transmission Plc for an Order granting Development Consent for Richborough Connection Project

Written Representation submitted on behalf of Network Rail Infrastructure Limited

Planning Inspectorate Reference No: EN020017 Richborough Connection Project

Representation No. 30

1 Introduction

- 1.1 This written representation (**Written Representation**) is submitted on behalf of Network Rail Infrastructure Limited (**Network Rail**) in response to the application by National Grid Electricity Transmission Plc (**Applicant**) for the Richborough Connection Project Development Consent Order (**Proposed DCO**). Network Rail submitted its earlier section 56 representation (Representation No 30) on 30 March 2016. The Proposed DCO seeks development consent for the construction and operation of the infrastructure as specifically detailed in Schedule 1 of the Proposed DCO (**Proposed Development**).
- 1.2 Network Rail owns, operates and maintains the railway infrastructure of Great Britain. It does so pursuant to a network licence granted under section 8 of the Railways Act 1993 (**Network Licence**).
- 1.3 Network Rail does not object in principle to the Proposed DCO. However, Network Rail objects to the compulsory acquisition and extinguishing of rights in operational or third party land on which it relies for the carrying out of its statutory undertaking.
- 1.4 Network Rail also objects to the seeking of powers to carry out works over and/or in the vicinity of the operational railway without first securing appropriate protections for Network Rail's statutory undertaking, and the current drafting of the Proposed DCO which does not contain adequate protective provisions.
- 1.5 In order for Network Rail to be in a position to withdraw its objection to the Proposed DCO Network Rail requires:
 - (a) agreement from the Applicant that the acquisition rights over operational and third party land (including the extinguishment of any rights and restrictions on such land) is on terms agreed with Network Rail for the protection of its statutory undertaking, and that compulsory powers will not be exercised in relation to such land; and
 - (b) sufficient protection for Network Rail's statutory undertaking is put in place for the carrying out of works over and/or in the vicinity of the operational railway network.
- 1.6 Network Rail and the Applicant met on 24 May 2016 and are continuing to engage in detailed discussions regarding the points of objection to the Proposed DCO and the resolution of Network Rail's concerns. Network Rail is hopeful the matter can be resolved through the course of negotiations with the Applicant. However, in the absence of reaching agreement to safeguard its interests, Network Rail, as an interested party, reserves its right to be heard at the compulsory acquisition hearing and at any further issue specific hearings on the Proposed DCO.

2 Impacts on the Railway

- 2.1 Network Rail has interests in numerous plots (**Plots**) identified in the Book of Reference and associated Land Plans submitted with the application for the Proposed DCO. The Plots include 15 sites where Network Rail own, let or occupy the land referred to, Plots 23, 260, 237, 239, 1031, 1051, 1083, 1161, 1202, 1249, 1291, 1582, 1583, 1585 and 1588.
- 2.2 Particular concerns on how the Proposed Development will have a detrimental impact on the operation of the railway and will prevent Network Rail operating the railway safely and efficient are:

- (a) The railway line which the overhead lines (**OHL**) would cross in Plot 1031 (Island Road Sarre) abuts the River Stour and drainage routes. The presence of the drains and the river makes it far more likely that emergency maintenance and flood preventions measures will be required, including emergency earthworks in the area. Network Rail is therefore very concerned about this OHL line and pylon PC36 which is very close to the railway line. The Applicant must ensure that no works will impact on the drainage of the railway and/or increase the risk of flooding;
- (b) The Ashford to Ramsgate line which includes Plot 1031 and Plot 1583 is intended to be resignalled. It is also anticipated that re-electrification to 25kV ac overhead lines will be necessary in the long term along this part of the railway network. This would require extensive works along the railway and the Applicant should anticipate the presence of the railway overhead lines when considering necessary clearance heights and ensure that the safety of the Proposed Development and the railway are secured. Sufficient space and access for ongoing maintenance will also be required. The presence of OHL that do not comply with this would prevent these improvement works from taking place; and
- (c) Access over level crossings is being requested in a number of places (namely plots 1051, 1083, 1201 & 1291) this will cause an increased risk at level crossings due to the additional use of these crossings. Prior to this being allowed Network Rail would normally expect to have the opportunity to carry out a full Level Crossing Risk Assessment(s) and only if an acceptable level of risk was shown or risks adequately mitigated would additional use be permitted. The Proposed DCO must allow an opportunity for this risk assessment to be carried out and any mitigation measures taken before access is permitted.

3 Compulsory acquisition of rights over operational and third party land

- 3.1 Network Rail considers that there is no compelling case in the public interest for the compulsory acquisition of rights over the Plots.
- 3.2 Network Rail also considers that the Secretary of State, in applying section 127 of the Planning Act 2008, cannot conclude that new rights and restrictions over the railway land can be created without serious detriment to Network Rail's undertaking; and no other land is available to Network Rail which means that the detriment can be made good by them.
- 3.3 Network Rail and the Applicant have begun discussions to ensure that appropriate arrangements are agreed for suitable options to grant easements and a form of easement to provide the Applicant with the necessary rights over relevant, affected, Plots. Discussions have also commenced to secure the necessary deed of release of restrictive covenants in relation to certain rights enjoyed by Network Rail in relation to certain Plots. Network Rail can see no reason why compulsory powers should be necessary to give effect to the Proposed Development. Clearance certificates have been issued for the new line crossings which confirm the level of protection Network Rail require (see Annex 1) similar protections will also be required for works over the railway to remove the existing overhead lines and appropriate asset protection agreements entered into in due course.

4 Protective Provisions

- 4.1 The protective provisions included within Part 4 of Schedule 14 to the Proposed DCO are not sufficient to protect the interests of Network Rail.

- 4.2 The protective provisions were suggested without any engagement with Network Rail or a proper understanding of the level of protection required by Network Rail.
- 4.3 The standard form of protective provisions which Network Rail would expect to be included within the Proposed DCO to protect its interests, including a robust indemnity from the Applicant, are not reflected in the Proposed DCO.
- 4.4 The Applicant has also omitted Network Rail's standard provisions requiring the Applicant to obtain Network Rail's consent before exercising compulsory acquisition powers which will impact on railway land.
- 4.5 The changes that Network Rail require to the proposed protective provisions are set out in Annex 2 to this written representation (**NR Protective Provisions**). The reasons for the required amendments are explained in detail below.

Paragraph 29 – restriction on exercise of undertaker's compulsory powers

- 4.6 Paragraph 29 provides that the Applicant shall not exercise powers of compulsory acquisition, contained in a number of articles in the Proposed DCO, in relation to railway property, without the consent of Network Rail.
- 4.7 Network Rail request that the longstanding principle that compulsory acquisition powers are not granted in respect of railway property is maintained in the Proposed DCO, by the inclusion of paragraph 29 of the NR Protective Provisions, which has been included in numerous development consent and Transport and Works Act Orders. For the reasons set out in Part 2 of this Written Representation, an absence of such protection for Network Rail will have a detrimental effect on Network Rail's ability to carry out its statutory undertaking and safely operate the railway network.
- 4.8 Paragraph 29 (2) and (3) are also of critical importance to Network Rail as it ensures access to and from the railway through Network Rail's land will not be impeded which is a key concern if compulsory powers are granted over Network Rail's land. Network Rail and its customers must have the ability to reach the railway. Network Rail must be able reach the railway at any time to secure its safety and operation. Often maintenance will be carried out through out the night and will require machinery to be moved in and out of the site. Any risk of access being prevented or impeded at anytime without prior consent is therefore unacceptable.

Paragraph 30 – construction of specified work by Network Rail

- 4.9 Paragraph 30(3) of the NR Protective Provisions provides that, where Network Rail gives notice to the undertaker that Network Rail desires to construct a new part of the specified work which will or may affect the stability of railway property or the safe operation of traffic on the railway, then, if the undertaker desires such part of the specified work to be constructed, Network Rail shall construct it.
- 4.10 The Applicant has suggested that paragraph 30(3) includes wording so that should Network Rail wish to construct specified work which has an impact on railway property as described, then it must also construct adjoining parts of the specified work reasonably required by the undertaker.
- 4.11 Network Rail's principal objection to this additional wording is that being required to carry out additional works could go beyond the scope of works that it is authorised to carry out by its Network Licence. In addition, such works may also include works for which Network Rail

is not funded and it may be inappropriate for public funds, which have been allocated to fund railway infrastructure, to be used to carry out works specified by the Applicant. This is not to say that there may not be a situation where Network Rail would agree to carry out any additional works requested by the Applicant but Network Rail's position remains that any such expanded works package must be one that is agreed by it and not imposed on it by the Applicant under the terms of the Proposed DCO.

Paragraph 41– indemnity provision

- 4.12 Paragraph 30(2) of the Proposed DCO protective provisions (see page 115) provides that if damage is caused to railway property as a result of the construction of a specified work, the undertaker must make good such damage and pay to Network Rail *"all reasonable expenses to which Network Rail may be put and compensation for any loss which it may sustain by reason of such damage, interference or obstruction"*. However, Network Rail notes that this is a much narrower reimbursement provision than the indemnity requested at paragraph 41 of the NR Protective Provisions. Further, it does not include an indemnity in respect of claims made by train operating companies following disruptions to the network resulting from the specified work.
- 4.13 We understand the Applicants' position on this issue is that Network Rail or any train operating company would have to pursue recovery of that loss from the Applicant in accordance with the general law of tort.
- 4.14 Network Rail submits that this approach would require it, and train operating companies, to commit significant time and expense in seeking to recover losses through the Court. Another difficulty for Network Rail is that under the law of tort it would not be able to recover for "pure economic loss" namely financial losses resulting from the impact of the construction or maintenance of a specified work on Network Rail and train operating companies. It would only be able to claim for death or personal injury and damage to other property resulting from the Applicants' breach of a duty of care.
- 4.15 The Secretary of State will also be aware that specific compensation regimes apply between Network Rail and train operating companies which have been agreed by the Department for Transport (DfT) and the ORR to ensure that risk is appropriately apportioned between Network Rail and the train operating companies. If an appropriate indemnity is not included in the Proposed DCO, additional risk will be placed on Network Rail which is unlikely to be acceptable to the DfT and HM Treasury.
- 4.16 Forcing claims into the courts when specific regimes have been set up to avoid this, is counter intuitive. The compensation schemes allow risk and financial cost to have already been agreed and apportioned within the rail industry which has the benefit of reducing the cost to the taxpayer of disputes. It would be contrary to the public interest to encourage claims arising from the Proposed Development to be dealt differently, particularly as any such claim would not have arisen but for the Proposed Development.
- 4.17 Network Rail further draws two additional points to the Secretary of State's attention:
- (a) the indemnity at paragraph 41 applies only to "all reasonable costs, charges, damages and expenses which may be occasioned to or reasonably incurred by Network Rail". Accordingly, it is not an unfettered indemnity; and
 - (b) the indemnity has been included in many Development Consent and Transport and Works Act Orders over many years.

Paragraph 46 – written notice to Network Rail of proposed transfer of benefit of Proposed DCO

- 4.18 Paragraph 46 of the NR Protective Provisions require the Applicant to give notice to Network Rail before making an application to the Secretary of State under article 7 of the Proposed DCO to transfer the benefit of the Proposed DCO to a third party.
- 4.19 Network Rail considers that it is important that any transferee has an appropriate strength of covenant and will be able to comply with the obligations under the Proposed DCO including the protective provisions. Network Rail considers that it is essential that it has notice of any proposed transferee so that it is able to make representations to the Secretary of State on the suitability of any proposed transferee.

Definition of Railway Property

- 4.20 The Network Rail Protective Provisions define "railway property" as follows:

"Railway Property" means any railway belonging to Network Rail and –

- (a) any station, or land, works, apparatus and equipment belonging to Network Rail or connected with any such railway; and*
- (b) any easement or other property interest held or used by Network Rail for the purposes of such railway or works, apparatus or equipment.*

The Applicant's wording would mean that the references to Network Rail would be references to Network Rail Infrastructure Limited and that the word "or" in limb (a) would be the word "and".

- 4.21 Network Rail does not agree with the Applicant's wording. The wording proposed by the Applicant would have the effect of narrowing the extent of railway property to which the protections afforded by the NR Protective Provisions would apply. The word "or" makes it clear that railway property does not only include stations, land, works, apparatus and equipment belonging to Network Rail but also any station, land, works, apparatus and equipment that is used in connection with the railway but that may be owned by others such as train operating companies. Indeed, it is often the case that stations are leased to and operated by train operating companies and the inclusion of the word "or" in the definition of railway property would avoid protracted disputes between the Applicant and Network Rail as to whether railway property strictly "belongs" to Network Rail. Accordingly, Network Rail asks that the definition of "railway property" is as set out in the NR Protective Provisions.
- 4.22 Network Rail reserves its position, in both representations and submissions at hearings, to seek the necessary amendments to the proposed protective provisions to ensure the protective provisions adequately protect Network Rail's operational infrastructure affected by the Proposed Development.

5 Asset protection

- 5.1 Network Rail will not be in a position to withdraw its objection to the Proposed DCO unless sufficient protections are put in place for the carrying out of work over and/or in the vicinity of the operational railway. The Proposed DCO includes works which cross over the Ashford to Ramsgate line (ELR:ACR) at two places and the Minster South to Dover Priory (ELR:

BME2) line. These works comprise both temporary use of Network Rail's land during the construction phase as well as works of a permanent nature.

5.2 In respect of all of these works, Network Rail requires asset protection agreements to be put in place to secure:

- (a) that no works shall be carried out without Network Rail's prior approval of the plans, specification, method statement and programme of works;
- (b) full access rights, during both the construction and operation phases, are retained for the benefit of Network Rail to enable the carrying out of all necessary maintenance, repair, renewal, inspection and enhancement works;
- (c) recovery of Network Rail's legal and professional fees, costs and disbursements incurred in connection with the proposals to carry out the works and any other costs incurred by Network Rail arising out of the construction, operation and maintenance of the works; and
- (d) no work will be carried out unless and until all consents, licences, registrations and authorisations (including any statutory or regulatory consents) are in place.

5.3 Network Rail requires these protections to be secured prior to any third party works being undertaken on, or in, proximity to operational land.

6 Conclusions

6.1 Network Rail does not object in principle to the Proposed Development. However it strongly objects to the proposed compulsory and permanent acquisition of rights over operational land and the inadequate protective provisions in the Proposed DCO.

6.2 Network Rail considers that the Secretary of State, cannot allow the Proposed DCO to be granted without amendment, as the test in section 127 of the Planning Act 2008, cannot be satisfied. The Proposed Development would result in serious detriment to Network Rail's undertaking and Network Rail does not have any other land available to it which could be used to avoid such detriment.

6.3 Network Rail is in discussions with the Applicant but until such time as Network Rail is given the protection and assurances requested as detailed in this Written Representation, Network Rail's objection to the Proposed DCO will not be withdrawn.

Addleshaw Goddard LLP 14 July 2016

Annex 1 – Clearance Certificates

Annex 2 – Protective Provisions



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e-mail: (Strategy Clearance)
strategyclearance@networkrail.co.uk

Jonathan Sinclair
Property
Date :07-06-2016
CR/28777 (Certificate number : 37449)

CERTIFICATE OF APPROVAL FOR STAGE 2 (TECHNICAL) CLEARANCE

Promoter reference number: 9851
Location/Nearest Station: Sturry
Territory: South East
Site Name: Richbororugh 2
Site Description: land near to Island Road (A28) Canterbury
Proposed Use: Laying of a 400KV overhead electricity cable by National Grid
National Grid Reference: 625528 , 164453
ELR Mileage: ACR 78.047
Type of Clearance: Commercial - CPO
Time Frame: Valid for 2 years from date of issue of the certificate.

Approved with the following conditions/ comments from Technical Clearance Advisor.

1. Ayugase Isao of Network Operations: PART 1 GENERIC CONDITIONS ADDITIONAL TO CONDITIONS WITHIN STANDARD LICENCE AGREEMENT

Approval in Principle is granted on the basis that the licence will include all standard clauses and conditions as a reference

1.1 The promoter will agree arrangements for the transfer of land with Maintenance. Responsibility will remain with the Maintenance Delivery Unit until the formal transfer takes place.

1.2 Following approval of a Clearance proposal and prior to the land being used, the promoter is responsible for a detailed services survey to locate the position of both operational and utility services. Any utility services identified should be brought to the attention of the Applicant who should satisfy himself on the accuracy and any omissions. Should the survey identify Network Rail services the promoter should refer to Network Rails Asset Protection Team. The Asset Protection Team will ascertain and specify what measures, including possible re-location and at what cost, need to be put in place, along with any other asset protection measures.

PART 2 SITE SPECIFIC CONDITIONS FOR INCLUSION IN THE LEGAL DOCUMENTATION

2.1 Access

Network Rail is to reserve the full right and liberty to enter upon the property (at all reasonable times except in an emergency), with or without vehicles, plant and equipment, workmen, agents and contractors for the purposes of maintaining, repairing, renewing or reinstating any structures or infrastructure on their adjoining or neighbouring land which cannot be reasonably undertaken from within Network Rails retained land.

2.2 Drawings

The Licensee to submit fully detailed drawings (three copies) of any physical alterations/development within the Licence site for the Senior Asset Protection Engineers written approval prior to any work commencing. All costs incurred by Network Rail in giving such approvals and any site safety supervision are to be reimbursed by the Licensee.

2.3 Fencing

The promoter is required to erect SUITABLE fencing in accordance with NR/L2/TRK/5100. Network Rail will assume ownership and maintenance of the new lineside fence; the Network Rail boundary fence will be the responsibility of the Licensee.

2.4 Drainage

All surface and foul water drainage from the licence area should be directed away from Network Rails retained land/structures

into suitable drainage systems details of which are to be approved by Network Rail.

The construction of soakaways for storm or surface water drainage should not take place within 20 metres of the Network Rail boundary. Any new drains are to be constructed and maintained so as not to have any adverse affect upon the stability of any Network Rail structure, cutting or embankment.

2.5 Construction

The Licensee (and any successor in title) is not to construct any building within 3 metres of the railway boundary fence without obtaining prior approval from Network Rails Territory Asset Protection Engineer.

2.6 Determination

On termination of the License, the Licensee to remove all buildings, plant, equipment and infrastructure and to reinstate the land to the satisfaction of the Maintenance Delivery Unit Manager. Responsibility will remain with the managing function until arrangements for the formal hand back of land are agreed and implemented with the Maintenance Delivery Unit.

This approval is the **final step** in gaining an agreement in principle to the proposed use of the footprint of land for a Commercial scheme.

Yours Sincerely

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Asset Protection



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Jonathan Sinclair
Property
Date :07-06-2016
CR/28774 (Certificate number : 37450)

CERTIFICATE OF APPROVAL FOR STAGE 2 (TECHNICAL) CLEARANCE

Promoter reference number: 95147
Location/Nearest Station: Sturry
Territory: South East
Site Name: Richborough
Site Description: Land near Sturry station, Canterbury in Kent
Proposed Use: Laying of an new 400KV overhead electricity line by National Grid
National Grid Reference: 616729 , 160070
ELR Mileage: ACR 72.0131
Type of Clearance: Commercial - CPO
Time Frame: Valid for 2 years from date of issue of the certificate.

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2.2 Drawings

The Licensee to submit fully detailed drawings (three copies) of any physical alterations/development within the Licence site for the Senior Asset Protection Engineers written approval prior to any work commencing. All costs incurred by Network Rail in giving such approvals and any site safety supervision are to be reimbursed by the Licensee.

2.3 Fencing

The promoter is required to erect SUITABLE fencing in accordance with NR/L2/TRK/5100. Network Rail will assume ownership and maintenance of the new lineside fence; the Network Rail boundary fence will be the responsibility of the Licensee.

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All surface and foul water drainage from the licence area should be directed away from Network Rails retained land/structures

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This approval is the **final step** in gaining an agreement in principle to the proposed use of the footprint of land for a Commercial scheme.

Yours Sincerely

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Jonathan Sinclair
Property
Date :07-06-2016
CR/28778 (Certificate number : 37451)

CERTIFICATE OF APPROVAL FOR STAGE 2 (TECHNICAL) CLEARANCE

Promoter reference number: 9851
Location/Nearest Station: Sandwich
Territory: South East
Site Name: Richborough 3
Site Description: Land near Richborough power station in Kent
Proposed Use: Laying of a new 400KV overhead electricity cable by National Grid
National Grid Reference: 632652 , 161918
ELR Mileage: BME2 83.0912
Type of Clearance: Commercial - CPO
Time Frame: Valid for 2 years from date of issue of the certificate.

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PROTECTIVE PROVISIONS

PART 4

FOR THE PROTECTION OF RAILWAY INTERESTS

26. The following provisions of this Part have effect, unless otherwise agreed in writing between the undertaker and Network Rail and, in the case of paragraph 41, any other person on whom rights or obligations are conferred by that paragraph.

27. In this Schedule—

"construction" includes execution, placing, alteration and reconstruction and "construct" and "constructed" have corresponding meanings;

"the engineer" means an engineer appointed by Network Rail for the purposes of this Order;

"network licence" means the network licence, as the same is amended from time to time, granted to Network Rail by the Secretary of State in exercise of his powers under section 8 of the Railways Act 1993;

"Network Rail" means Network Rail Infrastructure Limited and any associated company of Network Rail Infrastructure Limited which holds property for railway purposes, and for the purpose of this definition "associated company" means any company which is (within the meaning of section 1159 of the Companies Act 2006 the holding company of Network Rail Infrastructure Limited, a subsidiary of Network Rail Infrastructure Limited or another subsidiary of the holding company of Network Rail Infrastructure Limited;

"plans" includes sections, designs, design data, software, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction), staging proposals, programmes and details of the extent, timing and duration of any proposed occupation of railway property;

"railway operational procedures" means procedures specified under any access agreement (as defined in the Railways Act 1993) or station lease;

"railway property" means any railway belonging to Network Rail and-

- (a) any station, land, works, apparatus and equipment belonging to Network Rail or connected with any such railway; and
- (b) any easement or other property interest held or used by Network Rail for the purposes of such railway or works, apparatus or equipment; and

"specified work" means so much of any of the authorised development as is situated upon, across, under, over or within 15 metres of, or may in any way adversely affect, railway property.

28. (1) Where under this Schedule Network Rail is required to give its consent or approval in respect of any matter, that consent or approval is subject to the condition that Network Rail complies with any relevant railway operational procedures and any obligations under its network licence or under statute.

(2) In so far as any specified work or the acquisition or use of railway property is or may be subject to railway operational procedures, Network Rail must—

- (a) co-operate with the undertaker with a view to avoiding undue delay and securing conformity as between any plans approved by the engineer and requirements emanating from those procedures; and
- (b) use their reasonable endeavours to avoid any conflict arising between the application of those procedures and the proper implementation of the authorised development pursuant to this Order.

29. (1) The undertaker must not exercise the powers conferred by—

- (a) article 16 (*discharge of water*);
- (b) article 18 (*authority to survey and investigate the land*);
- (c) article 19 (*authority to override easements and other rights*);
- (d) article 22 and 25 (*compulsory acquisition of rights*);
- (e) article 23 and 24 (*power to override easements and other rights*);
- (f) article 26 (*acquisition of subsoil only*);
- (g) article 29 and 30 (*temporary use of land for carrying out the authorised development*);
- (h) article 31 (*temporary use of land for maintaining the authorised development*);

- (i) article 33 (*statutory undertakers*);
- (j) article 41 (*felling or lopping of trees or shrubs*)
- (k) article 42 (*trees subject to tree preservation orders*)
- (l) or the powers conferred by section 11(3) of the 1965 Act,
in respect of any railway property unless the exercise of such powers is with the consent of Network Rail.

(2) The undertaker must not in the exercise of the powers conferred by this Order prevent pedestrian or vehicular access to any railway property, unless preventing such access is with the consent of Network Rail.

(3) The undertaker must not exercise the powers conferred by sections 271 or 272 of the 1990 Act, or article 34 (*statutory undertakers*), in relation to any right of access of Network Rail to railway property, but such right of access may be diverted with the consent of Network Rail.

(4) The undertaker must not under the powers of this Order acquire or use or acquire new rights over any railway property except with the consent of Network Rail.

(5) Where Network Rail is asked to give its consent pursuant to this paragraph, such consent must not be unreasonably withheld but may be given subject to reasonable conditions.

30. (1) The undertaker must before commencing construction of any specified work supply to Network Rail proper and sufficient plans of that work for the reasonable approval of the engineer and the specified work must not be commenced except in accordance with such plans as have been approved in writing by the engineer or settled by arbitration under article 51 (arbitration).

(2) The approval of the engineer under sub-paragraph (1) must not be unreasonably withheld, and if by the end of the period of 28 days beginning with the date on which such plans have been supplied to Network Rail the engineer has not intimated his disapproval of those plans and the grounds of his disapproval the undertaker may serve upon the engineer written notice requiring the engineer to intimate his approval or disapproval within a further period of 28 days beginning with the date upon which the engineer receives written notice from the undertaker and if by the expiry of the further 28 days period specified in the written notice the engineer has not intimated his approval or disapproval, he shall be deemed to have approved the plans as submitted.

(3) If by the end of the period of 28 days beginning with the date on which written notice was served upon the engineer under sub-paragraph (2), Network Rail gives notice to the undertaker that Network Rail desires itself to construct any part of a specified work which in the opinion of the engineer will or may affect the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker desires such part of the specified work to be constructed, Network Rail must construct it with all reasonable dispatch on behalf of and to the reasonable satisfaction of the undertaker in accordance with the plans approved or deemed to be approved or settled under this paragraph, and under the supervision (where appropriate and if given) of the undertaker.

(4) When signifying his approval of the plans the engineer may specify any protective works (whether temporary or permanent) which in his opinion should be carried out before the commencement of the construction of a specified work to ensure the safety or stability of railway property or the continuation of safe and efficient operation of the railways of Network Rail or the services of operators using the same (including any relocation de-commissioning and removal of works, apparatus and equipment necessitated by a specified work and the comfort and safety of passengers who may be affected by the specified works), and such protective works as may be reasonably necessary for those purposes are to be constructed by Network Rail or by the undertaker, if Network Rail so desires, and such protective works are to be carried out at the expense of the undertaker in either case with all reasonable dispatch and the undertaker must not commence the construction of the specified works until the engineer has notified the undertaker that the protective works have been completed to his reasonable satisfaction.

31. (1) Any specified work and any protective works to be constructed by virtue of paragraph 30(4) must, when commenced, be constructed—
- (a) with all reasonable dispatch in accordance with the plans approved or deemed to have been approved or settled under paragraph 30;
 - (b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the engineer;
 - (c) in such manner as to cause as little damage as is possible to railway property; and
 - (d) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe use of any railway of Network Rail or the traffic thereon and the use by passengers of railway property.

(2) If any damage to railway property or any such interference or obstruction shall be caused by the carrying out of, or in consequence of the construction of a specified work, the undertaker must, notwithstanding any such approval, make good such damage and must pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may sustain by reason of any such damage, interference or obstruction.

(3) Nothing in this Part of this Schedule imposes any liability on the undertaker with respect to any damage, costs, expenses or loss attributable to the negligence of Network Rail or its servants, contractors or agents or any liability on Network Rail with respect of any damage, costs, expenses or loss attributable to the negligence of the undertaker or its servants, contractors or agents.

32. The undertaker must-

(a) at all times afford reasonable facilities to the engineer for access to a specified work during its construction; and

(b) supply the engineer with all such information as he may reasonably require with regard to a specified work or the method of constructing it.

33. Network Rail must at all times afford reasonable facilities to the undertaker and its agents for access to any works carried out by Network Rail under this Part of this Schedule during their construction and must supply the undertaker with such information as it may reasonably require with regard to such works or the method of constructing them.

34. (1) If any permanent or temporary alterations or additions to railway property are reasonably necessary in consequence of the construction of a specified work, or during a period of 24 months after the completion of that work in order to ensure the safety of railway property or the continued safe operation of the railway of Network Rail, such alterations and additions may be carried out by Network Rail and if Network Rail gives to the undertaker reasonable notice of its intention to carry out such alterations or additions (which must be specified in the notice), the undertaker must pay to Network Rail the reasonable cost of those alterations or additions including, in respect of any such alterations and additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by Network Rail in maintaining, working and, when necessary, renewing any such alterations or additions.

(2) If during the construction of a specified work by the undertaker, Network Rail gives notice to the undertaker that Network Rail desires itself to construct that part of the specified work which in the opinion of the engineer is endangering the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker decides that part of the specified work is to be constructed, Network Rail must assume construction of that part of the specified work and the undertaker must, notwithstanding any such approval of a specified work under paragraph 30(3), pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may suffer by reason of the execution by Network Rail of that specified work.

(3) The engineer must, in respect of the capitalised sums referred to in this paragraph and paragraph 35(a) provide such details of the formula by which those sums have been calculated as the undertaker may reasonably require.

(4) If the cost of maintaining, working or renewing railway property is reduced in consequence of any such alterations or additions a capitalised sum representing such saving must be set off against any sum payable by the undertaker to Network Rail under this paragraph.

35. The undertaker must repay to Network Rail all reasonable fees, costs, charges and expenses reasonably incurred by Network Rail—

(a) in constructing any part of a specified work on behalf of the undertaker as provided by paragraph 30(3) or in constructing any protective works under the provisions of paragraph 30(4) including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works;

(b) in respect of the approval by the engineer of plans submitted by the undertaker and the supervision by him of the construction of a specified work;

(c) in respect of the employment or procurement of the services of any inspectors, signalmen, watchmen and other persons whom it shall be reasonably necessary to appoint for inspecting, signalling, watching and lighting railway property and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of a specified work;

(d) in respect of any special traffic working resulting from any speed restrictions which may in the opinion of the engineer, require to be imposed by reason or in consequence of the

construction or failure of a specified work or from the substitution or diversion of services which may be reasonably necessary for the same reason; and

(e) in respect of any additional temporary lighting of railway property in the vicinity of the specified works, being lighting made reasonably necessary by reason or in consequence of the construction or failure of a specified work.

36. (1) In this paragraph-

“EMI” means, subject to sub-paragraph (2), electromagnetic interference with Network Rail apparatus generated by the operation of the authorised development where such interference is of a level which adversely affects the safe operation of Network Rail’s apparatus; and

“Network Rail’s apparatus” means any lines, circuits, wires, apparatus or equipment (whether or not modified or installed as part of the authorised development) which are owned or used by Network Rail for the purpose of transmitting or receiving electrical energy or of radio, telegraphic, telephonic, electric, electronic or other like means of signaling or other communications.

(2) This paragraph applies to EMI only to the extent that such EMI is not attributable to any change to Network Rail’s apparatus carried out after approval of plans under paragraph 30(1) for the relevant part of the authorised development giving rise to EMI (unless the undertaker has been given notice in writing before the approval of those plans of the intention to make such change).

(3) Subject to sub-paragraph (5), the undertaker must in the design and construction of the authorised development take all measures necessary to prevent EMI and must establish with Network Rail (both parties acting reasonably) appropriate arrangements to verify their effectiveness.

(4) In order to facilitate the undertaker’s compliance with sub-paragraph (3)-

(a) the undertaker must consult with Network Rail as early as reasonably practicable to identify all Network Rail’s apparatus which may be at risk of EMI, and thereafter must continue to consult with Network Rail (both before and after formal submission of plans under paragraph 30(1)) in order to identify all potential causes of EMI and the measures required to eliminate them;

(b) Network Rail must make available to the undertaker all information in the possession of Network Rail reasonably requested by the undertaker in respect of Network Rail's apparatus identified pursuant to sub-paragraph (a); and

(c) Network Rail must allow the undertaker reasonable facilities for the inspection of Network Rail's apparatus identified pursuant to sub-paragraph (a).

(5) In any case where it is established that EMI can only reasonably be prevented by modifications to Network Rail's apparatus, Network Rail must not withhold its consent unreasonably to modifications of Network Rail's apparatus, but the means of prevention and the method of their execution must be selected in the reasonable discretion of Network Rail, and in relation to such modifications paragraph 30(1) have effect subject to the sub-paragraph.

(6) If at any time prior to the commencement of regular revenue-earning operations comprised in the authorised development and notwithstanding any measures adopted pursuant to sub-paragraph (3), the testing or commissioning of the authorised development causes EMI then the undertaker must immediately upon receipt of notification by Network Rail of such EMI either in writing or communicated orally (such oral communication to be confirmed in writing as soon as reasonably practicable after it has been issued) forthwith cease to use (or procure the cessation of use of) the undertaker's apparatus causing such EMI until all measures necessary have been taken to remedy such EMI by way of modification to the source of such EMI or (in the circumstances, and subject to the consent, specified in sub-paragraph (5)) to Network Rail's apparatus.

(7) In the event of EMI having occurred –

(a) the undertaker must afford reasonable facilities to Network Rail for access to the undertaker's apparatus in the investigation of such EMI;

(b) Network Rail must afford reasonable facilities to the undertaker for access to Network Rail's apparatus in the investigation of such EMI; and

(c) Network Rail must make available to the undertaker any additional material information in its possession reasonably requested by the undertaker in respect of Network Rail's apparatus or such EMI.

(8) Where Network Rail approves modifications to Network Rail's apparatus pursuant to sub-paragraphs (5) or (6) –

(a) Network Rail must allow the undertaker reasonable facilities for the inspection of the relevant part of Network Rail's apparatus;

(b) any modifications to Network Rail's apparatus approved pursuant to those sub-paragraphs must be carried out and completed by the undertaker in accordance with paragraph 6.

(9) To the extent that it would not otherwise do so, the indemnity in paragraph 40(1) applies to the costs and expenses reasonably incurred or losses suffered by network Rail through the implementation of the provisions of this paragraph (including costs incurred in connection with the consideration of proposals, approval of plans, supervision and inspection of works and facilitating access to Network Rail's apparatus) or in consequence of any EMI to which sub-paragraph (6) applies.

(10) For the purpose of paragraph 35(a) any modifications to Network Rail's apparatus under this paragraph shall be deemed to be protective works referred to in that paragraph.

(11) In relation to any dispute arising under this paragraph the reference in article 51 (Arbitration) to the Secretary of State shall be read as a reference to the Institution of Electrical Engineers.

37. If at any time after the completion of a specified work, not being a work vested in Network Rail, Network Rail gives notice to the undertaker informing it that the state of maintenance of any part of the specified work appears to be such as adversely affects the operation of railway property, the undertaker must, on receipt of such notice, take such steps as may be reasonably necessary to put that specified work in such state of maintenance as not adversely to affect railway property.
38. The undertaker must not provide any illumination or illuminated sign or signal on or in connection with a specified work in the vicinity of any railway belonging to Network Rail unless it has first consulted Network Rail and it must comply with Network Rail's reasonable requirements for preventing confusion between such illumination or illuminated sign or signal and any railway signal or other light used for controlling, directing or securing the safety of traffic on the railway.
39. Any additional expenses which Network Rail may reasonably incur in altering, reconstructing or maintaining railway property under any powers existing at the making of this Order by reason of the existence of a specified work must, provided that 56 days' previous notice of the

commencement of such alteration, reconstruction or maintenance has been given to the undertaker, be repaid by the undertaker to Network Rail.

40. (1) The undertaker must pay to Network Rail all reasonable costs, charges, damages and expenses not otherwise provided for in this Part of this Schedule (subject to article 50 (*no double recovery*)) which may be occasioned to or reasonably incurred by Network Rail—

(a) by reason of the construction or maintenance of a specified work or the failure thereof or

(b) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon a specified work;

and the undertaker must indemnify and keep indemnified Network Rail from and against all claims and demands arising out of or in connection with a specified work or any such failure, act or omission: and the fact that any act or thing may have been done by Network Rail on behalf of the undertaker or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under his supervision shall not (if it was done without negligence on the part of Network Rail or of any person in its employ or of its contractors or agents) excuse the undertaker from any liability under the provisions of this sub-paragraph.

(2) Network Rail must give the undertaker reasonable written notice of any such claim or demand and no settlement or compromise of such a claim or demand shall be made without the prior consent of the undertaker.

(3) The sums payable by the undertaker under sub-paragraph (1) shall if relevant include a sum equivalent to the relevant costs.

(4) Subject to the terms of any agreement between Network Rail and a train operator regarding the timing or method of payment of the relevant costs in respect of that train operator, Network Rail must promptly pay to each train operator the amount of any sums which Network Rail receives under sub-paragraph (3) which relates to the relevant costs of that train operator.

(5) The obligation under sub-paragraph (3) to pay Network Rail the relevant costs shall, in the event of default, be enforceable directly by any train operator concerned to the extent that such sums would be payable to that operator pursuant to sub-paragraph (4).

(6) In this paragraph—

"the relevant costs" means the costs, direct losses and expenses (including loss of revenue) reasonably incurred by each train operator as a consequence of any restriction of the use of Network Rail's railway network as a result of the construction, maintenance or failure of a specified work or any such act or omission as mentioned in subparagraph (1); and

"train operator" means any person who is authorised to act as the operator of a train by a licence under section 8 of the Railways Act 1993.

41. Network Rail must, on receipt of a request from the undertaker, from time to time provide the undertaker free of charge with written estimates of the costs, charges, expenses and other liabilities for which the undertaker is or will become liable under this Schedule (including the amount of the relevant costs mentioned in paragraph 40) and with such information as may reasonably enable the undertaker to assess the reasonableness of any such estimate or claim made or to be made pursuant to this Schedule (including any claim relating to those relevant costs).
42. In the assessment of any sums payable to Network Rail under this Part of this Schedule there must not be taken into account any increase in the sums claimed that is attributable to any action taken by or any agreement entered into by Network Rail if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by the undertaker under this Schedule or increasing the sums so payable.
43. The undertaker and Network Rail may, subject in the case of Network Rail to compliance with the terms of its network licence, enter into, and carry into effect, agreements for the transfer to the undertaker of—
 - (a) any railway property shown on the works and land plans and described in the Book of Reference;
 - (b) any lands, works or other property held in connection with any such railway property; and
 - (c) any rights and obligations (whether or not statutory) of Network Rail relating to any railway property or any lands, works or other property referred to in this paragraph.
44. Nothing in this Order, or in any enactment incorporated with or applied by this Order, prejudices or affects the operation of Part I of the Railways Act 1993.

45. The undertaker must give written notice to Network Rail if any application is proposed to be made by the undertaker for the Secretary of State's consent, under article 7 (consent to transfer benefit of Order) of this Order and any such notice must be given no later than 28 days before any such application is made and must describe or give (as appropriate)—
- (a) the nature of the application to be made;
 - (b) the extent of the geographical area to which the application relates; and
 - (c) the name and address of the person acting for the Secretary of State to whom the application is to be made.
46. The undertaker must no later than 28 days from the date that the plans submitted to and certified by the Secretary of State in accordance with article 44 (certification of plans etc) are certified by the Secretary of State, provide a set of those plans to Network Rail in the form of a computer disc with read only memory.

PART 4

PROTECTION FOR RAILWAY INTERESTS

26. The following provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between the undertaker and Network Rail and, in the case of paragraph 41, any other person on whom rights or obligations are conferred by that paragraph.
27. In this Part of this Schedule—
- "construction" includes execution, placing, alteration and reconstruction and "construct" and "constructed" have corresponding meanings; "
- "the engineer" means an engineer appointed by Network Rail for the purposes of this Order;
- "network licence" means the network licence, as the same is amended from time to time, granted to Network Rail by the Secretary of State in exercise of his powers under section 8 of the Railways Act 1993
- "Network Rail" means Network Rail Infrastructure Limited and any associated company of Network Rail Infrastructure Limited which holds property for railway purposes, and for the purpose of this definition "associated company" means any company which is (within the meaning of section 1159 of the Companies Act 2006 the holding company of Network Rail Infrastructure Limited, a subsidiary of Network Rail Infrastructure Limited or another subsidiary of the holding company of Network Rail Infrastructure Limited;
- "plans" includes sections, designs, design data, software, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction), staging proposals, programmes and details of the extent, timing and duration of any proposed occupation of railway property;
- "railway operational procedures" means procedures specified under any access agreement (as defined in the Railways Act 1993) or station lease;
- "railway property" means any railway belonging to Network Rail ~~Infrastructure Limited~~ and—
- (a) any station, land, works, apparatus and equipment belonging to Network Rail ~~Infrastructure Limited~~ and or connected with any such railway; and
 - (b) any easement or other property interest held or used by Network Rail ~~Infrastructure Limited~~ for the purposes of such railway or works, apparatus or equipment; and

"specified work" means so much of any of the authorised development as is situated upon, across, under, over or within 15 metres of, or may in any way adversely affect, railway property.

28. (1) Where under this Schedule Network Rail is required to give its consent or approval in respect of any matter, that consent or approval is subject to the condition that Network Rail complies with any relevant railway operational procedures and any obligations under its network licence or under statute.

(2) In so far as any specified work or the acquisition or use of railway property is or may be subject to railway operational procedures, Network Rail must—

- (a) co-operate with the undertaker with a view to avoiding undue delay and securing conformity as between any plans approved by the engineer and requirements emanating from those procedures; and
- (b) use their reasonable endeavours to avoid any conflict arising between the application of those procedures and the proper implementation of the authorised development pursuant to this Order.

29. (1) The undertaker must not exercise the powers conferred by—

- (a) article 16 (discharge of water);
- (b) article 18 (authority to survey and investigate the land);
- (c) article 19 (authority to override easements and other rights);
- (d) article 22 and 25 (compulsory acquisition of rights);
- (e) article 23 and 24 (power to override easements and other rights);
- (f) article 26 (acquisition of subsoil only)
- (g) article 29 and 30 (temporary use of land for carrying out the authorised development);
- (h) article 31 (temporary use of land for maintaining the authorised development);
- (i) article 33 (statutory undertakers);
- (j) article 41 (felling or lopping of trees or shrubs)
- (k) article 42 (trees subject to tree preservation orders)
- (l) or the powers conferred by section 11(3) of the 1965 Act,

in respect of any railway property unless the exercise of such powers is with the consent of Network Rail.

(2) The undertaker must not in the exercise of the powers conferred by this Order prevent pedestrian or vehicular access to any railway property, unless preventing such access is with the consent of Network Rail.

(3) The undertaker must not exercise the powers conferred by sections 271 or 272 of the 1990 Act, or article 33 (statutory undertakers), in relation to any right of access of Network Rail to railway property, but such right of access may be diverted with the consent of Network Rail.

(4) The undertaker must not under the powers of this Order acquire or use or acquire new rights over any railway property except with the consent of Network Rail.

(5) Where Network Rail is asked to give its consent pursuant to this paragraph, such consent must not be unreasonably withheld but may be given subject to reasonable conditions.

30. (1) The undertaker must before commencing construction of any specified work supply to Network Rail proper and sufficient plans of that work for the reasonable approval of the engineer and the specified work must not be commenced except in accordance with such plans as have been approved in writing by the engineer or settled by arbitration under article 51 (arbitration).

(2) The approval of the engineer under sub-paragraph (1) must not be unreasonably withheld, and if by the end of the period of 28 days beginning with the date on which such plans have been supplied to Network Rail the engineer has not intimated his disapproval of those plans and the grounds of his disapproval the undertaker may serve upon the engineer written notice requiring the engineer to intimate his approval or disapproval within a further period of 28 days beginning with the date upon which the engineer receives written notice from the undertaker and if by the expiry of the further 28 days period specified in the written notice the engineer has not intimated his approval or disapproval, he shall be deemed to have approved the plans as submitted.

(3) If by the end of the period of 28 days beginning with the date on which written notice was served upon the engineer under sub-paragraph (2) Network Rail gives notice to the undertaker that Network Rail desires itself to construct any part of a specified work which in the opinion of the engineer will or may affect the stability of railway property or the safe operation of

traffic on the railways of Network Rail then, if the undertaker desires such part of the specified work to be constructed, Network Rail must construct it ~~(together with any adjoining part of the specified work which the undertaker reasonably requires to be constructed in one operation with that work)~~ with all reasonable dispatch on behalf of and to the reasonable satisfaction of the undertaker in accordance with the plans approved or deemed to be approved or settled under this paragraph, and under the supervision (where appropriate and if given) of the undertaker.

(4) When signifying his approval of the plans the engineer may specify any protective works (whether temporary or permanent) which in his opinion should be carried out before the commencement of the construction of a specified work to ensure the safety or stability of railway property or the continuation of safe and efficient operation of the railways of Network Rail or the services of operators using the same (including any relocation de-commissioning and removal of works, apparatus and equipment necessitated by a specified work and the comfort and safety of passengers who may be affected by the specified works), and such protective works as may be reasonably necessary for those purposes ~~are to~~must be constructed by Network Rail or by the undertaker, if Network Rail so desires, and such protective works ~~shall~~must be carried out at the expense of the undertaker in either case with all reasonable dispatch and the undertaker must not commence the construction of the specified works until the engineer has notified the undertaker that the protective works have been completed to his reasonable satisfaction.

31. (1) Any specified work and any protective works to be constructed by virtue of paragraph 30(4) ~~must~~, when commenced, be constructed—

(a) with all reasonable dispatch in accordance with the plans approved or deemed to have been approved or settled under paragraph ~~29~~30;

(b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the engineer;

(c) in such manner as to cause as little damage as is possible to railway property; and

(d) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe use of any railway of Network Rail or the traffic thereon and the use by passengers of railway property.

(2) If any damage to railway property or any such interference or obstruction shall be caused by the carrying out of, or in consequence of the construction of a specified work, the

undertaker must, notwithstanding any such approval, make good such damage and must pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may sustain by reason of any such damage, interference or obstruction.

(3) Nothing in this Part of this Schedule imposes any liability on the undertaker with respect to any damage, costs, expenses or loss attributable to the negligence of Network Rail or its servants, contractors or agents or any liability on Network Rail with respect of any damage, costs, expenses or loss attributable to the negligence of the undertaker or its servants, contractors or agents.

32. The undertaker must-

- (a) at all times afford reasonable facilities to the engineer for access to a specified work during its construction; and
- (b) supply the engineer with all such information as he may reasonably require with regard to a specified work or the method of constructing it.

33. Network Rail must at all times afford reasonable facilities to the undertaker and its agents for access to any works carried out by Network Rail under this Part of this Schedule during their construction and must supply the undertaker with such information as it may reasonably require with regard to such works or the method of constructing them.

34. (1) If any permanent or temporary alterations or additions to railway property, are reasonably necessary in consequence of the construction of a specified work, or during a period of ~~12~~24 months after the completion of that work, in order to ensure the safety of railway property or the continued safe operation of the railway of Network Rail, such alterations and additions may be carried out by Network Rail and if Network Rail gives to the undertaker reasonable notice of its intention to carry out such alterations or additions (which must be specified in the notice), the undertaker must pay to Network Rail the reasonable cost of those alterations or additions including, in respect of any such alterations and additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by Network Rail in maintaining, working and, when necessary, renewing any such alterations or additions.

35. (2) If during the construction of a specified work by the undertaker, Network Rail gives notice to the undertaker that Network Rail desires itself to construct that part of

the specified work which in the opinion of the engineer is endangering the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker decides that part of the specified work is to be constructed, Network Rail must assume construction of that part of the specified work and the undertaker must, notwithstanding any such approval of a specified work under paragraph [30\(3\)](#), pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may suffer by reason of the execution by Network Rail of that specified work.

[\(3\) The engineer must](#), in respect of the capitalised sums referred to in this paragraph and paragraph [35\(a\)](#) provide such details of the formula by which those sums have been calculated as the undertaker may reasonably require.

(4) If the cost of maintaining, working or renewing railway property is reduced in consequence of any such alterations or additions a capitalised sum representing such saving must be set off against any sum payable by the undertaker to Network Rail under this paragraph.

36. The undertaker must repay to Network Rail all reasonable fees, costs, charges and expenses reasonably incurred by Network Rail—

(a) in constructing any part of a specified work on behalf of the undertaker as provided by paragraph [2930\(3\)](#) or in constructing any protective works under the provisions of paragraph [2930\(4\)](#) including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works;

(b) in respect of the approval by the engineer of plans submitted by the undertaker and the supervision by him of the construction of a specified work;

(c) in respect of the employment or procurement of the services of any inspectors, signalmen, watchmen and other persons whom it shall be reasonably necessary to appoint for inspecting, signalling, watching and lighting railway property and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of a specified work;

(d) in respect of any special traffic working resulting from any speed restrictions which may in the opinion of the engineer, require to be imposed by reason or in consequence of the

construction or failure of a specified work or from the substitution or diversion of services which may be reasonably necessary for the same reason; and

(e) in respect of any additional temporary lighting of railway property in the vicinity of the specified works, being lighting made reasonably necessary by reason or in consequence of the construction or failure of a specified work.

37. (1) In this paragraph-

“EMI” means, subject to sub-paragraph (2), electromagnetic interference with Network Rail apparatus generated by the operation of the authorised development where such interference is of a level which adversely affects the safe operation of Network Rail’s apparatus; and

“Network Rail’s apparatus” means any lines, circuits, wires, apparatus or equipment (whether or not modified or installed as part of the authorised development) which are owned or used by Network Rail for the purpose of transmitting or receiving electrical energy or of radio, telegraphic, telephonic, electric, electronic or other like means of ~~signalling~~ signaling or other communications.

(2) This paragraph applies to EMI only to the extent that such EMI is not attributable to any change to Network Rail’s apparatus carried out after approval of plans under paragraph ~~29~~30(1) for the relevant part of the authorised development giving rise to EMI (unless the undertaker has been given notice in writing before the approval of those plans of the intention to make such change).

(3) Subject to sub-paragraph (5), the undertaker must in the design and construction of the authorised development take all measures necessary to prevent EMI and must establish with Network Rail (both parties acting reasonably) appropriate arrangements to verify their effectiveness.

(4) In order to facilitate the undertaker’s compliance with sub-paragraph (3) ~~—~~ —

(a) the undertaker must consult with Network Rail as early as reasonably practicable to identify all Network Rail’s apparatus which may be at risk of EMI, and thereafter must continue to consult with Network Rail (both before and after formal submission of plans under paragraph ~~29~~30(1)) in order to identify all potential causes of EMI and the measures required to eliminate them;

(b) Network Rail must make available to the undertaker all information in the possession of Network Rail reasonably requested by the undertaker in respect of Network Rail's apparatus identified pursuant to sub-paragraph (a); and

(c) Network Rail must allow the undertaker reasonable facilities for the inspection of Network Rail's apparatus identified pursuant to sub-paragraph (a).

(5) In any case where it is established that EMI can only reasonably be prevented by modifications to Network Rail's apparatus, Network Rail must not withhold its consent unreasonably to modifications of Network Rail's apparatus, but the means of prevention and the method of their execution must be selected in the reasonable discretion of Network Rail, and in relation to such modifications paragraph 29~~30~~(1) have effect subject to the sub-paragraph.

(6) If at any time prior to the commencement of regular revenue-earning operations comprised in the authorised development and notwithstanding any measures adopted pursuant to sub-paragraph (3), the testing or commissioning of the authorised development causes EMI then the undertaker must immediately upon receipt of notification by Network Rail of such EMI either in writing or communicated orally (such oral communication to be confirmed in writing as soon as reasonably practicable after it has been issued) forthwith cease to use (or procure the cessation of use of) the undertaker's apparatus causing such EMI until all measures necessary have been taken to remedy such EMI by way of modification to the source of such EMI or (in the circumstances, and subject to the consent, specified in sub-paragraph (5) to Network Rail's apparatus.

(7) In the event of EMI having occurred

(a) the undertaker must afford reasonable facilities to Network Rail for access to the undertaker's apparatus in the investigation of such EMI;

(b) Network Rail must afford reasonable facilities to the undertaker for access to Network Rail's apparatus in the investigation of such EMI; and

(c) Network Rail must make available to the undertaker any additional material information in its possession reasonably requested by the undertaker in respect of Network Rail's apparatus or such EMI.

(8) Where Network Rail approves modifications to Network Rail's apparatus pursuant to sub-paragraphs (5) or (6)

(a) Network Rail must allow the undertaker reasonable facilities for the inspection of the relevant part of Network Rail's apparatus;

(b) any modifications to Network Rail's apparatus approved pursuant to those sub-paragraphs must be carried out and completed by the undertaker in accordance with paragraph ~~30-6~~.

(9) To the extent that it would not otherwise do so, the indemnity in paragraph 40(1) applies to the costs and expenses reasonably incurred or losses suffered by network Rail through the implementation of the provisions of this paragraph (including costs incurred in connection with the consideration of proposals, approval of plans, supervision and inspection of works and facilitating access to Network Rail's apparatus) or in consequence of any EMI to which sub-paragraph (6) applies.

(10) For the purpose of paragraph ~~34~~35(a) any modifications to Network Rail's apparatus under this paragraph shall be deemed to be protective works referred to in that paragraph.

~~(4011)~~ In relation to any dispute arising under this paragraph the reference in article 51 (~~arbitration~~Arbitration) to the ~~Institution of Civil Engineers~~Secretary of State shall be read as a reference to the Institution of Electrical Engineers.

38. ~~36-~~If at any time after the completion of a specified work, not being a work vested in Network Rail, Network Rail gives notice to the undertaker informing it that the state of maintenance of any part of the specified work appears to be such as adversely affects the operation of railway property, the undertaker must, on receipt of such notice, take such steps as may be reasonably necessary to put that specified work in such state of maintenance as not adversely to affect railway property.

39. ~~37-~~The undertaker must not provide any illumination or illuminated sign or signal on or in connection with a specified work in the vicinity of any railway belonging to Network Rail unless it has first consulted Network Rail and it must comply with Network Rail's reasonable requirements for preventing confusion between such illumination or illuminated sign or signal and ~~448~~ any railway signal or other light used for controlling, directing or securing the safety of traffic on the railway.

40. ~~38-~~Any additional expenses which Network Rail may reasonably incur in altering, reconstructing or maintaining railway property under any powers existing at the making of this Order by reason of the existence of a specified work must, provided that 56 days' previous notice of the commencement of such alteration, reconstruction or maintenance has been given to the undertaker, be repaid by the undertaker to Network Rail.

41. (1) The undertaker must pay to Network Rail all reasonable costs, charges, damages and expenses not otherwise provided for in this Part of this Schedule (subject to article 50 (no double recovery)) which may be occasioned to or reasonably incurred by Network Rail—

(a) by reason of the construction or maintenance of a specified work or the failure thereof or

(b) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon a specified work;

and the undertaker must indemnify and keep indemnified Network Rail from and against all claims and demands arising out of or in connection with a specified work or any such failure, act or omission; and the fact that any act or thing may have been done by Network Rail on behalf of the undertaker or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under his supervision shall not (if it was done without negligence on the part of Network Rail or of any person in its employ or of its contractors or agents) excuse the undertaker from any liability under the provisions of this sub-paragraph.

(2) Network Rail must give the undertaker reasonable written notice of any such claim or demand and no settlement or compromise of such a claim or demand shall be made without the prior consent of the undertaker.

(3) The sums payable by the undertaker under sub-paragraph (1) shall if relevant include a sum equivalent to the relevant costs.

(4) Subject to the terms of any agreement between Network Rail and a train operator regarding the timing or method of payment of the relevant costs in respect of that train operator, Network Rail must promptly pay to each train operator the amount of any sums which Network Rail receives under sub-paragraph (3) which relates to the relevant costs of that train operator.

(5) The obligation under sub-paragraph (3) to pay Network Rail the relevant costs shall, in the event of default, be enforceable directly by any train operator concerned to the extent that such sums would be payable to that operator pursuant to sub-paragraph (4).

(6) In this paragraph—

"the relevant costs" means the costs, direct losses and expenses (including loss of revenue) reasonably incurred by each train operator as a consequence of any restriction of the use of Network Rail's railway network as a result of the construction, maintenance or failure of a specified work or any such act or omission as mentioned in subparagraph (1); and

"train operator" means any person who is authorised to act as the operator of a train by a licence under section 8 of the Railways Act 1993.

42. Network Rail must, on receipt of a request from the undertaker, from time to time provide the undertaker free of charge with written estimates of the costs, charges, expenses and other liabilities for which the undertaker is or will become liable under this Schedule (including the amount of the relevant costs mentioned in paragraph 40) and with such information as may reasonably enable the undertaker to assess the reasonableness of any such estimate or claim made or to be made pursuant to this Schedule (including any claim relating to those relevant costs).
43. In the assessment of any sums payable to Network Rail under this Part of this Schedule there must not be taken into account any increase in the sums claimed that is attributable to any action taken by or any agreement entered into by Network Rail if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by the undertaker under this Schedule or increasing the sums so payable.
44. The undertaker and Network Rail may, subject in the case of Network Rail to compliance with the terms of its network licence, enter into, and carry into effect, agreements for the transfer to the undertaker of
- (a) any railway property shown on the works and land plans and described in the Book of Reference;
 - (b) any lands, works or other property held in connection with any such railway property; and
 - (c) any rights and obligations (whether or not statutory) of Network Rail relating to any railway property or any lands, works or other property referred to in this paragraph.

45. Nothing in this Order, or in any enactment incorporated with or applied by this Order, prejudices or affects the operation of Part I of the Railways Act 1993.
46. The undertaker must give written notice to Network Rail if any application is proposed to be made by the undertaker for the Secretary of State's consent, under article 7 (consent to transfer benefit of Order) of this Order and any such notice must be given no later than 28 days before any such application is made and must describe or give (as appropriate)—
- (a) the nature of the application to be made;
- (b) the extent of the geographical area to which the application relates; and
- (c) the name and address of the person acting for the Secretary of State to whom the application is to be made.
47. The undertaker must no later than 28 days from the date that the plans submitted to and certified by the Secretary of State in accordance with article ~~45~~44 (certification of plans etc) are certified by the Secretary of State, provide a set of those plans to Network Rail in the form of a computer disc with read only memory.

Document comparison by Workshare Professional on 05 April 2016 16:05:32

Input:	
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Rendering set	addleshaw goddard on screen version

Legend:	
<u>Insertion</u>	
Deletion	
Moved from	
<u>Moved to</u>	
Style change	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
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